

STATE OF IOWA  
PROPERTY ASSESSMENT APPEAL BOARD

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**Oscar Mayer Foods Corp.,**  
Petitioner-Appellant,

v.

**Davenport City Board of Review,**  
Respondent-Appellee.

**ORDER**

**Docket Nos. 10-103-0390 through  
10-103-0420  
Corresponding Parcel Numbers**

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On March 27, 2012, the above-captioned appeals came before the Iowa Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Oscar Mayer Foods Corp., was represented by attorney Patrick C. Doody, Chicago, Illinois, and submitted evidence in support of its appeals. Attorney William Stiles of Dickinson Mackaman Tyler and Hagan, PC., Des Moines, Iowa, represented the Board of Review. It submitted new evidence in addition to the certified record. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

***Findings of Fact***

Oscar Mayer Food Corporation (Oscar Mayer), owner of property located at 1337 West Second Street, Davenport, Iowa, appeals from the Davenport Board of Review decisions reassessing its property. The real estate was classified industrial for the January 1, 2010, assessment and collectively valued at \$14,291,700. The individual assessments of the parcels on appeal are as follows:

Docket Number	Parcel Number	Land AV	Bldg AV	Total AV
10-103-0390	K0007-07	\$ 15,600	\$ 6,800	\$ 22,400
10-103-0391	K0007-08	\$ 15,600	\$ 3,600	\$ 19,200
10-103-0392	K0007-11	\$ 9,400	\$ 3,600	\$ 13,000
10-103-0393	K0007-12	\$ 8,900	\$ 3,300	\$ 12,200
10-103-0394	K0007-13	\$ 15,600	\$ 7,000	\$ 22,600
10-103-0395	K0008-01	\$ 5,500	\$ 2,100	\$ 7,600
10-103-0396	K0008-02	\$ 5,500	\$ 2,100	\$ 7,600
10-103-0397	K0008-03	\$ 2,800	\$ 600	\$ 3,400
10-103-0398	K0008-04	\$ 9,100	\$ 4,900	\$ 14,000
10-103-0399	K0008-05	\$ 9,500	\$ 9,800	\$ 19,300
10-103-0400	K0008-06	\$ 9,500	\$ 10,500	\$ 20,000
10-103-0401	K0008-07	\$ 14,400	\$ 4,400	\$ 18,800
10-103-0402	K0008-08	\$ 7,700	\$ 3,000	\$ 10,700
10-103-0403	K0008-09	\$ 10,500	\$ 4,300	\$ 14,800
10-103-0404	K0008-10	\$ 9,400	\$ 3,800	\$ 13,200
10-103-0405	K0009-01	\$ 18,400	\$ 6,900	\$ 25,300
10-103-0406	K0009-03	\$ 10,600	\$ 3,700	\$ 14,300
10-103-0407	K0009-04	\$ 10,900	\$ 3,900	\$ 14,800
10-103-0408	K0009-05	\$ 105,200		\$ 105,200
10-103-0409	K0009-06	\$ 428,600	\$10,527,600	\$ 10,956,200
10-103-0410	K0010-12	\$ 16,800	\$ 4,200	\$ 21,000
10-103-0411	K0010-13	\$ 23,300	\$ 4,400	\$ 27,700
10-103-0412	K0024-31B	\$ 59,100		\$ 59,100
10-103-0413	K0001-33	\$ 17,300	\$ 10,000	\$ 27,300
10-103-0414	K0001-34	\$ 10,900	\$ 8,100	\$ 19,000
10-103-0415	K0001-35	\$ 12,700	\$ 9,400	\$ 22,100
10-103-0416	K0001-36A	\$ 18,500	\$ 16,100	\$ 34,600
10-103-0417	K0016-02	\$ 5,400	\$ 2,300	\$ 7,700
10-103-0418	K0016-03	\$ 7,100	\$ 2,300	\$ 9,400
10-103-0419	K0016-04	\$ 9,000	\$ 2,500	\$ 11,500
10-103-0420	R0537-07	\$ 300,600	\$ 2,417,100	\$ 2,717,700
		\$ 1,203,400	\$13,088,300	\$ 14,291,700

Oscar Mayer protested to the Board of Review on the ground that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b). The Board of Review denied the protest.

Oscar Mayer then appealed to this Board on the same ground. It valued the subject property at \$3,500,000, subject to it obtaining an appraisal.

The subject property is a meat processing facility of the Oscar Mayer Food Corporation. The improvements consist of a multi-building, multi-story plant that was primarily constructed between



1915 and 1977 with an attached, one-story warehouse built in 1977. Overall, it is 758,007 square feet.<sup>1</sup> The site consists of approximately 17 acres.

Jeffrey S. Miller of Premier Partners, a commercial real estate company, Davenport, Iowa, testified on behalf of Oscar Mayer. Miller is a real estate broker. He testified, that in his opinion, the subject property suffers from obsolescence related to the multi-story construction and outdated structures. Miller estimates a gross rent for the subject property of \$2.00 to \$2.50 per square foot for the warehouse area, and \$0.50 to \$1.00 for the production area. He estimated expenses at \$0.75 to \$1.00 per square foot. He testified that a capitalization rate of 10% is typical for the Davenport area. However, because of flooding issues and the type of construction, he believes a 12% to 14% capitalization rate would be appropriate for the subject property. Miller testified he has not listed the property for sale. In his opinion, he would list the property for \$2,275,000. This Board notes that Miller did not submit an actual listing for the subject property or submit a report regarding his conclusions. We also note there is often a difference between list prices and actual value resulting from a sales.

Oscar Mayer submitted an appraisal by Gary A. Battuello, of Ramsland & Vigen, Inc., Duluth, Minnesota. Battuello valued the property for January 1, 2010, at \$5,000,000.

Battuello conducted a sales comparison approach to value. He testified this is a limited-market property so comparable sales may occur over a longer time frame. He used seven sales that occurred from 2000 to 2007. All of the properties were large industrial-manufacturing facilities. Battuello developed a qualitative adjustment system using a plus (+) or minus (-) for adjustments to the comparables. He testified on cross-examination that he preferred to use the qualitative adjustment process because it is hard to make adjustments to these types of properties. Battuello's appraisal noted due to the subject's age, multi-building/multi-story design, and large market area makes comparisons

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<sup>1</sup> Some discrepancy existed between the square footage of the property as reported by the different appraisers and the assessor's office. We reference the property's square footage as noted by the assessor's office (Exhibit E).

to the sales data more difficult. His unadjusted square foot range is from \$3.43 to \$14.99 per square foot. In his report he narrowed the range to \$6.00 to \$7.00 after his qualitative adjustments.

Battuello's sales comparison approach resulted in a value range from \$4,500,000 to \$5,250,000; his final conclusion of value from this approach was \$5,000,000. However, due to the use of his plus (+) or minus (-) system, and lack of explanation, this Board is unable to determine whether his adjustments make the sales reasonably comparable to the subject property.

Battuello also completed a cost approach to value and determined the value to be \$5,700,000. He determined a replacement cost new of \$54,305,000 and depreciated the property at 92.5%, which gave a building value of \$4,072,875. His land and site improvements were \$1,585,000, for a total cost approach estimate of \$5,657,875, rounded to \$5,700,000. Battuello's appraisal noted "cost approach conclusions can only be given limited weight due to the less intense, single use of the site and due to the deterioration and obsolescence impacting the improvements." He noted the property suffers from all forms of depreciation.

Battuello did not develop the income approach to value. In his opinion, the income approach would be overly speculative since the property is an old, multi-story food processing space and rental data information is not available.

In his reconciliation, Battuello gave the most weight to the sales comparison approach and limited weight to the cost approach. His final estimate was \$5,000,000 as of January 1, 2010.

The Board of Review submitted an appraisal completed by Patrick J. Schulte, Commercial Appraisers of Iowa, Inc., West Des Moines, Iowa, with an effective date of January 1, 2010. He determined the value to be \$8,200,000. Schulte performed all three approaches to value. He valued the subject property using the cost approach at \$8,200,000; the sales comparison approach at \$7,700,000; and the income approach at \$8,800,000. Schulte gave the most weight to the sales and income approaches to value. He gave the cost approach only some reliance due to the large amounts



of depreciation and obsolescence. He testified that although he used all three approaches to value the subject property, it was a difficult assignment because of the lack of good data.

In his cost approach, Schulte determined the replacement cost new and depreciated for physical depreciation and functional and external obsolescence and determined the building and site improvement to be \$7,646,701. He added his land value of \$590,000 to arrive at a total value of \$8,236,701 or \$8,200,000 (rounded).

His income approach determined the net income to be \$1,169,322, and capitalized the income at 11.5% for a value of \$10,200,000 (rounded). He then removed exempt refrigeration equipment for a final value of \$8,800,000.

Schulte's sales comparison approach used four sales that he found reliable. He made percentage adjustments for market conditions, size, condition, refrigeration, and other items. His adjusted square-foot range was from \$8.68 to \$10.67 per square foot. Schulte determined \$10.00 to be the market value per square foot. His final estimate for the sales comparison approach was \$7,700,000 (rounded).

Oscar Mayer also called Anthony I. Uzemack, of Appraisal Systems, LLC, Chicago, Illinois, as a witness. Uzemack performed an appraisal review of Schulte's appraisal submitted by the Davenport City Board of Review. Uzemack reviewed the Davenport appraisal to investigate its compliance with Uniform Standards of Professional Appraisal Practice (USPAP.) Uzemack pointed out what he considered errors and lack of supporting data in the appraisal. However, Uzemack did not render an opinion of value or present evidence to support his claim. Therefore, we gave his testimony no weight.

Finally, Tom McManus, Deputy Assessor, testified that the City of Davenport reappraised the subject property for January 1, 2010. McManus stated the subject property was assessed using only the cost approach from the *Iowa Real Property Appraisal Manual*. McManus' testimony was mostly

descriptive information regarding the property under protest. We give his testimony little weight in regards to the actual valuation of the subject property for January 1, 2010.

### *Conclusions of Law*

The Appeal Board has jurisdiction of this matter pursuant to Iowa Code section 441.37A (2011). This Board is an agency and subject to the provisions of the Administrative Procedure Act. Iowa Code § 17A.2(1). This appeal is considered a contested case proceeding. § 441.37A(1)(b). Review by the Appeal Board is de novo, and the Appeal Board shall determine anew all questions arising before the Board of Review which relate to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). No new grounds in addition to those set out in the protest to the Board of Review shall be pleaded or considered by the Appeal Board, but additional evidence to sustain grounds presented to the Board of Review may be introduced. § 441.37A(1)(b). The taxpayer has the burden of proving the statutory grounds for the protest; however, the Appeal Board considers all of the evidence in the record to determine whether the taxpayer has proved its claim regardless of who introduced the evidence. *See* § 441.37; *Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). If the taxpayer offers competent evidence by two disinterested witnesses that the market value of a property is less than the assessment, the burden shifts to the board of review. *Soifer v. Floyd County Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009). There is no presumption as to the correctness of the valuation of the assessment appealed from. § 441.37A(3)(a). Findings are “based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs.” Iowa Code § 17A.12.

Property is to be valued at one hundred percent of its actual value. § 441.21(1)(a). Actual value is the property’s fair and reasonable market value. *Id.* “Market value” essentially is defined as the value established in an arm’s-length sale of the property. § 441.21(1)(b). Sales prices of the property or comparable properties in normal transactions are to be considered in arriving at market



value. *Id.* If sales are not available or market value “cannot be readily established in that manner,” “other factors” may be considered in arriving at market value. *Heritage Cablevision v. Board of Review of City of Mason City*, 457 N.W.2d 495, 597 (Iowa 1990); Iowa Code § 441.21(2).

“To determine whether other properties are sufficient comparable to be used as a basis for ascertaining market value under the comparable-sales approach, [the Supreme Court] has adopted the rule that the condition with respect to the other land must be ‘similar’ to the property being assessed.” *Soifer*, 759 N.W.2d at 783. “Similar does not mean identical, but having a resemblance; and property may be similar...though each possess various points of difference.” *Id.* Determining comparability of properties is left to the “sound discretion” of the trier of fact. *Id.* Consideration should be given to size, use, location, and character, as well as the nature and timing of the sale. *Id.* This Board is “free to give no weight to proffered evidence of comparable sales which it finds not to be reflective of market value.” *Heritage Cablevision*, 457 N.W.2d at 598.

In an appeal that alleges the property is assessed for more than authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Reviewing all the evidence in the record, we find the preponderance of the evidence supports Oscar Mayer’s contention the subject property is assessed for more than authorized by law. However, we decline to rely on its proffered opinion of value.

Oscar Mayer produced the testimony of three witness. However, Uzemack testified only in regards to appraisal standards and critiqued Schulte’s appraisal. And while Miller gave an estimation of a hypothetical listing price for the property, he did not present evidence to support his determination or an actual value conclusion. Finally, we find Battuello’s appraisal unreliable as a final determination of value because he did not make quantitative, percentage adjustments in his sales comparison

approach. The Iowa Supreme Court has noted on several occasions that “[i]f . . . points of difference between the assessed property and the other property are not quantifiable so as to permit the required adjustment, the other property will not be considered comparable.” *Soifer*, 759 N.W.2d at 783.

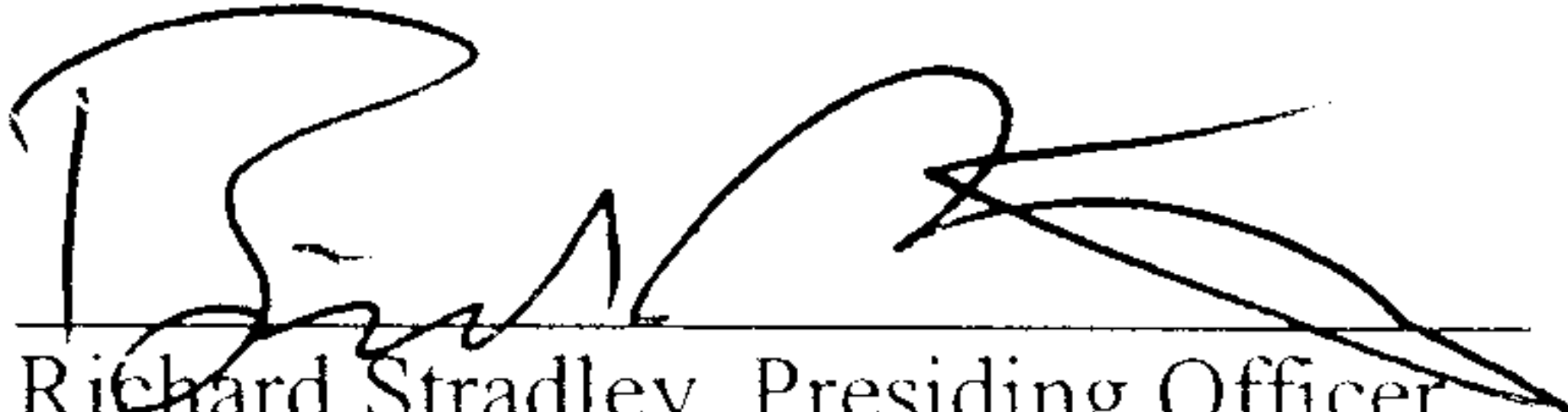
Additionally, the Court has rejected the comparability of property that differed from the subject property “because insufficient evidence to enable [it] to translate that difference into dollars of value.” *Id.* (quoting *Bartlett & Co. Grain v. Bd. of Review*, 253 N.W.2d 86, 94 (Iowa 1977)). Such quantifiable adjustments would enable this Board to better determine the reliability of the data and the precision of his conclusion of value.

Even though Oscar Mayer’s evidence fails to show this Board the subject property’s correct market value, the Board of Review’s own appraiser concluded a fair market value of the subject property that is less than the assessment. The best evidence in the record of the subject property’s market value is the appraisal by Schulte that valued the property at \$8,200,000. Schulte, unlike Battuello, made actual, quantified adjustments to the comparable sales used in his appraisal. Therefore, we modify the January 1, 2010, assessed value of Oscar Mayer’s property.

THE APPEAL BOARD ORDERS that the property located at 1337 West Second Street, Davenport, Iowa, assessment be modified to a total of \$8,200,000 as of January 1, 2010.

The Secretary of the State of Iowa Property Assessment Appeal Board shall mail a copy of this Order to the Scott County Auditor and all tax records, assessment books and other records pertaining to the assessment referenced herein on the subject parcels shall be corrected accordingly.

Dated this 25 day of June 2011.

  
Richard Stradley, Presiding Officer

  
Jacqueline Rypma, Board Member



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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>6-25</u> , 201 <u>2</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	